IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 439 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVEEN VIRANCHILAL THAKER

Versus

RAMANLAL BAPULAL THAKER DECD. THRO' HEIRS BALAGAURI W/O RAMA

Appearance:

MR DP KINARIWALA for Petitioners

MR HM PARIKH for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/01/2001

ORAL JUDGEMENT

1. Present Revisionists are the plaintiffs in Regular Civil Suit No. 318/1999 pending before Civil Judge, Junior Division at Mehmedabad and the present

opponent are the defendants therein. The Revisionists had preferred Special Civil Suit No. 84/1996 in the Court of Civil Judge, Senior Division, Kheda at Nadiad valuing a suit of Rs. 70,000/-. The valuation of the suit was split in two parts namely Rs. 35,000/- for the value of proposed construction and Rs. 35,000/- for cancellation of a sale deed. However, in the relief clause, relief only for a cancellation of the sale deed was made in that suit. The defendants, present opponents, raised an objection about jurisdiction of the Court vide application Exh.76. The said application was allowed and the suit was directed to be sent to the Civil Judge, Junior Division at Mahemdabad. It was accordingly sent to that Court and was numbered as Regular Civil Suit No. 318/1999.

1.1. The said order was challenged before this Court by preferring appeal from order No. 177/99 which came to be disposed of by an order dt. 07.05.1999 dismissing the said appeal from order. In that order this Court specifically observed that no relief was claimed in this suit with respect to the cost of construction and that relief is claimed only for cancellation of the sale deed valued at Rs. 70,000/though the sale deed is for Rs. 35,000/-.

1.2. Following this order, the plaintiff preferred an application before Civil Judge, Junior Division, Mehemdabad vide application Exh. 144 seeking to amend the plaint by adding a relief clause to the effect that the dependent be permitted to pay Rs. 35,000/- towards the cost of construction that may be made by the plaintiff. The said application came tobe rejected by learned Civil Judge, Junior Division, Mahemdabad by order dated 17.04.2000 which is the subject matter of challenge in this Revision Application.

1.3. Learned Judge observed that there was no cause of action which can be said to have arisen for the relief sought. The judge found that this was a delaying technique adopted by the plaintiff and by doing this the defendant would be put to hardship as the application for injunction would last longer.

2. Learned Advocate Mr. Kinariwala, appearing for the applicant, submitted that the plaintiff had approached the Court from the inception with a case that Rs. 35,000/- are claimed by him towards the cost of proposed construction which was required to be put by the plaintiff, as the defendants had failed to meet with the conditions of the sale deed. Mr. Kinariwala, submitted

that for that purpose a specific averment was made in para 4 of the plaint and that Court fee has also been paid by the plaintiff. Mr. Kinarawala, submitted that it is not a case here where the plaintiff proposed to add this relief clause suddenly advancing a new case and therefore the Trial Court ought to have allowed the amendment. The Trial Court having not considered this ought to have exercised the jurisdiction vested in it and therefore, the order may be set aside and amendment sought for may be allowed by allowing this Revision Application.

3. Mr. Parikh, learned Advocate for the respondent has opposed this Revision Application. According to him there is no cause of action for the relief sought for construction that is not put up; he also submitted that it is not the case of the plaintiff that he has demanded money from the defendant and that the defendant has refused to make the payment which would give cause of action to the plaintiff. In either case, the plaintiff has no cause of action and the Trial Court has rightly rejected the amendment sought for by the plaintfiffs.The Revision Application may therefore be dismissed.

4. Having heard the learned Advocates for rival sides and having gone through the papers it is abundantly clear that plaintiff has not mentioned in his plaint anything about the cause of action in this regard. The cause of action clause in the plaint is silent on this aspect. Much was argued about para 4 in the plaint. Even after close scrutiny no averment could be found which would indicate that a demand was made by the plaintiff from the defendant and the defendant refused to make the payment. The construction is also not made. Under the circumstance the plaintiff cannot be said to have any cause of action for the purpose and the relief sought for, therefore, cannot be granted. The Revision Application merits dismissal and the same is, therefore, dismissed. Rule is discharged. No Costs. Interim relief granted stands vacated.

(A.L. DAVE,J.)

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